

On May 29, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30582. Adulteration of Limburger cheese. U. S. v. 45 Cases of Limburger Cheese. Tried to the court. Judgment for the Government. Decree of condemnation and destruction. (F. & D. No. 44369. Sample No. 21558-D.)

This product contained insect fragments.

On November 17, 1938, the United States attorney for the Eastern District of Michigan, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 45 cases of Limburger cheese at Detroit, Mich.; alleging that the article had been shipped on or about August 8, 1938, by Miller-Richardson Co. from Rome, N. Y.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Mohawk Valley Brand Whole Milk Naturally Ripened Genuine New York State Limburger."

It was alleged to be adulterated in that it consisted wholly or in part of a filthy animal substance.

On April 7, 1939, the Kraft-Phenix Cheese Corporation, Detroit, Mich., claimant, filed a motion for an order directing discovery of documents showing the results of tests and inspection of samples, which motion was granted by the court. On April 18, 1939, a jury having been waived, the case was tried in the court and the following decision was handed down:

O'BRIEN, *District Judge*: "I think the Government has established its right to an order for the condemnation and confiscation of the cheese seized. I want to remark, of course, that the Kraft-Phenix Cheese Co. didn't make this cheese. They were the unfortunate holders of it when it got up to Detroit. It was made by some corporation down in New York, but in the judgment of the court the Government has established by substantial evidence that the cheese in question was in such a condition as to be in violation of the code involved in this libel. Beyond any question the rind or the skin of the cheese was impregnated with animal matter, flies, hair, and other substances of animal origin. In some instances of the analysis, the interior of the cheese was so impregnated, but I do not think that it would interfere with a judgment in this case if the interior had not been affected, although there is proof that it is, because a food product such as this at least should have such reasonable care and sanitary precaution in its manufacturing and in its marketing as to make it free from such noisome articles and objects and substances as appear to be in this cheese. The consumer has a right to expect that. Whether such cheese would be injurious to health or not is not of moment, or the court doesn't know, but at least the ultimate consumer in the homes and in the hotels and restaurants has a right to assume that the product that he eats or orders is free from such conditions. Otherwise, besides the annoyance that might ordinarily accompany the consumption of Limburger cheese, they would also have to provide themselves with microscopes or magnifying glasses. In fact, in the future the restaurants might advertise 'With music and magnifying glasses.' So, under the conditions of this testimony, I have no alternative but to grant to the Government the order it seeks for confiscation and condemnation."

On April 25, 1939, judgment of condemnation was entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30583. Adulteration and misbranding of wheat gray shorts and screenings. U. S. v. Canadian Mill & Elevator Co. Plea of guilty. Fine, \$50 and costs. (F. & D. No. 42710. Sample No. 3917-D.)

Wheat brown shorts and screenings had been substituted in whole or in part for this product. It also contained more crude fiber than was declared on the tag.

On May 15, 1939, the United States attorney for the Western District of Oklahoma, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Canadian Mill & Elevator Co., El Reno, Okla., alleging shipment by said defendant in violation of the Food and Drugs Act on or about November 26, 1938, from the State of Oklahoma into the State of Texas of a quantity of wheat gray shorts and screenings that were adulterated and misbranded.